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TIMOTHY K. WEBB, Ed.D.
COMMISSIONER

MEMORANDUM

TO: Directors of Special Education

FROM:  Joseph Fisher
Assistant Commissioner

DATE: June 3, 2009

RE: IDEA Eligibility Determinations for Children with Down Syndrome

The purpose of this memorandum is to clarify the standard to be applied and procedures to be followed by evaluation teams when determining IDEA eligibility for children with Down Syndrome.

Evaluations of children with Down Syndrome, for purposes of determining eligibility for special education and related services, must be conducted in accordance with *Tenn. Rules & Regs. §0520-1-9-.11* and *Tennessee Disability Eligibility Standards*, and thereby involve a comprehensive assessment which must include individually administered standardized assessments of IQ/cognition and adaptive behavior. When the results of the evaluations indicate that a child with Down Syndrome meets the standard for Mental Retardation as defined at *34 C.F.R. 300.8(c)(6)* and *Tenn. Rules & Regs. §0520-1-9-.02(12)*, Mental Retardation is the child's disability for purposes of special education and related services pursuant to the IDEA.

Although some children with Down Syndrome may also meet the standard for Speech or Language Impairment as defined at *34 C.F.R. 300.8(c)(11)* and *Tenn. Rules & Regs. §0520-1-9-.02(17)*, evaluation teams must determine the factors that are limiting a child's progress in the general education classroom. In such situations, the limiting factors for children with Down Syndrome are cognition and adaptive life skills, not language skills, and therefore Speech or Language Impairment is not the child's disability for purposes of special education and related services pursuant to the IDEA.

Although some children with Down Syndrome may also meet the standard for Developmental Delay as defined at *34 C.F.R. 300.8(b)* and *Tenn. Rules & Regs. 0520-1-9-.02(7)*, initial evaluations and reevaluations of such children after seven years of age, must include a comprehensive assessment that measures cognitive functioning. Evaluation teams and reevaluation teams must determine the factors that are limiting the child's progress in the general education classroom. In such situations, and particularly after seven years of age, the primary limiting factor for children with Down Syndrome is cognitive functioning, not developmental skills, and

therefore Developmental Delay is not the child's disability for purposes of special education and related services pursuant to the IDEA.

Down Syndrome is not a qualifying chronic or acute health problem within the definition of Other Health Impairment. *34 C.F.R. 300.8(c)(9)* and *Tenn. Rules & Regs. §0520-1-9-.02(15)*. Therefore, for the reasons cited above, Other Health Impairment is not the child's disability for purposes of special education and related services pursuant to the IDEA.

The comprehensive evaluation is a critical component in the development of appropriate and effective educational programs for children with disabilities. The purpose of conducting accurate and comprehensive assessments and evaluations, and thereby determining the appropriate IDEA disability for the child, is to collect data and information necessary for the provision of appropriate special education and related services, including post-secondary transition services, to the child.